

***United States Court of Appeals
for the Second Circuit***



APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 77-2149

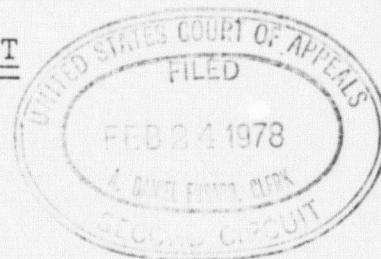
WILLIAM T. McNELLIS,
Appellant,

-v-

UNITED STATES OF AMERICA,
Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

APPENDIX FOR APPELLANT



WILLIAM T. McNELLIS
Appellant, Pro Se
Box PMB 96844-131
Atlanta, Georgia 30315

PAGINATION AS IN ORIGINAL COPY

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N 76-399

PLAINTIFFS

WILLIAM T. McNELLIS

DEFENDANTS

UNITED STATES OF AMERICA

CAUSE Motion to Vacate Judgment pursuant
to 28 U.S.C. 2255William T. McNellis
Box PMB 96844
UNITED STATES PENITENTIARY
ATLANTA, GEORGIA 30315ATTORNEYS Peter A. Clark
Asst. U. S. Attorney
270 Orange Street
P. O. Box 1824
New Haven, Conn. 06508☒ CHECK
HERE
IF CASE WAS
FILED IN
FORMA

DATE

FILING FEES PAID
RECEIPT NUMBER

C.D. NUMBER

STATISTICAL CARDS

CARD DATE MAILED

JS-5

JS-6

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12/10	1	Order to Show Cause Why Relief Should not be Granted, entered. Respondent ordered to show cause on or before December 29, 1976 by filing a response to petition; and petitioner's request to proceed in forma pauperis is granted. Zampano, J. Copy mailed to petitioner. Attested copies of Order together with copies of petition, handed to the Marshal for service on U.S. Atty and Warden. M-12/10/76.
	2	Motion to Vacate Judgment and Sentence, Certificate of Service, Memorandum of Law, Motion to Proceed in Forma Pauperis and Affidavit, filed.
12/15 1977	3	Marshal's Return Showing Service, filed. - Petition, OSC etc.
1/14	4	Response to Order to Show Cause, filed by U.S.A.
1/26	5	Motion to Extend Time for Filing Traverse to Government's Response to Order To Show Cause, to and including Feb. 10, 1977, filed by Petitioner pro se.
1/28		Order endorsed on pro se petitioner's Motion to Extend Time, (see above 1/26/77) GRANTING same. Zampano, J. M-1/31/77 Copies mailed.
2/14	6	Motion for Judgment on the Pleadings Pursuant to Rule 12(c), F.R.C.P., filed by pro se Petitioner, together with Notice of Motion.
"	7	Petitioner's Reply to Government's Response, filed.
3/21	8	Motion for Bail, filed by Petitioner.
3/24		Order endorsed on Petitioner's Motion for Bail, DENYING same. Zampano, J. M-3/24/77 Copies mailed.
4/15	9	Motion for Protective Order re deposition to be taken on 4/25/77, filed by plaintiff.
9/20	10	Ruling on Motion to Vacate Judgment and Sentence, entered. The petitioner's motion pursuant to 28 U.S.C. § 2255 is denied. Zampano, J. M-9/20/77 Copies mailed.
9/22	11	Judgment entered dismissing action. Markowski, C. M-9/22/77 Copies mailed.
10/20	12	Motion to Reconsider Order filed September 20, 1977, filed by Petitioner.
10/20	13	Petitioner's Appendix, filed.
10/27		Order endorsed on Petitioner's Motion to Reconsider Order, DENYING same. Zampano, J. M-10/27/77 Copies mailed.
11/8		Motion for leave to appeal in forma pauperis filed by plaintiff and endorsement entered thereon: "Granted" Zampano, J. M-11/8/77. copies mailed.
11/8	14	Notice of appeal filed by plaintiff. Copy of notice together with copy of docket entries sent to U.S.C.A. copies of notices sent to counsel of record.
11/21	15	Designation of Record on Appeal, filed by Petitioner.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FILED
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U.S. DISTRICT COURT
NEW HAVEN, CONN.

WILLIAM T. McNELLIS :
v. : CIVIL NO. N-76-399
UNITED STATES OF AMERICA :

RULING ON MOTION TO VACATE JUDGMENT AND SENTENCE

After his conviction by a jury of armed bank robbery, this Court sentenced petitioner to a term of imprisonment of 19 years. The judgment of conviction was affirmed by the Second Circuit on April 18, 1974, and certiorari was denied by the Supreme Court on October 15, 1974. A year later, this Court denied petitioner's applications to vacate his sentence and for a reduction of that sentence. He now submits a petition, pursuant to 28 U.S.C. § 2255, alleging that the government's key witness at the trial committed perjury and that the government was well aware of the deception. Cf., e.g., Moore v. Illinois, 408 U.S. 786, 797-798 (1972); Giglio v. United States, 405 U.S. 150, 154 (1972).

During the course of petitioner's trial before this Court, Aedan C. McCarthy, the government's main witness, furnished highly incriminating testimony. Both on direct and cross-examination, McCarthy was at length questioned about promises made to him by state and federal authorities in exchange for his cooperation. In effect, in addition to monetary and other benefits, McCarthy was promised he would not receive a sentence of incarceration longer than ten years. In conformity with the plea negotiations, Judge Newman

did sentence McCarthy to a ten-year sentence for bank robbery in Crim. No. 13,202.

Thereafter, McCarthy requested a reduction of sentence, claiming that federal agents had promised him he would do "no prison time, or very little prison time, or two years at the very most." After a hearing held on December 17, 1974, Judge Newman denied McCarthy's petition, stating, among other things, that the plea arrangements were fully carried out and that, "I just don't find any basis to credit the story that he was assured a more favorable arrangement."

Petitioner now seeks relief on the ground that McCarthy perjured himself, with the government's knowledge, when he denied at petitioner's trial that he received "no promises respecting the ten-year sentence."

It is, of course, settled law that the intentional suppression of evidence useful to the defense at trial will mandate a reversal of a criminal conviction. See, e.g., Giglio v. United States, 405 U.S. 150, 154 (1972); Napue v. Illinois, 360 U.S. 264, 269 (1959). However, this is certainly not the case here. This Court has reviewed the transcript of proceedings before Judge Newman as well as moving papers prepared by McCarthy's attorney and the Assistant United States Attorney in charge of petitioner's case. These materials conclusively demonstrate that the plea negotiations to obtain McCarthy's cooperation were precisely fulfilled. Any claim that McCarthy was extended more consideration than that revealed on the record before this Court and before Judge Newman must be deemed patently frivolous. The petitioner's affidavit lacks any credible evidence that McCarthy was promised more benefits than those

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testified to at the petitioner's trial. Therefore, no evidentiary hearing is required. See, e.g., Williams v. United States, 481 F.2d 339, 345 (2 Cir.), cert. denied, 414 U.S. 1010 (1973); Rodriguez v. United States, 473 F.2d 1042, 1043 (5 Cir. 1973); Dirring v. United States, 370 F.2d 862, 865 (1 Cir. 1967).

In any event, even assuming arguendo, that McCarthy had been promised "help" by the government in his motion before Judge Newman for reduction of sentence, this so-called newly discovered evidence would not warrant § 2255 relief. Even if this alleged information were presented to petitioner's jury, there is no likelihood that it would have affected the verdict. McCarthy was intensely examined on whether promises had been made that he would receive no incarceration, other than the ten years for bank robbery, for a series of very serious crimes. These other crimes included seven counts of attempted murder, a persistent offender charge, parole violation, several offenses committed in the Districts of Maine and New Hampshire, and all past offenses committed in the District and State of Connecticut. The jury chose to believe McCarthy's testimony against the petitioner despite this highly impeaching evidence. Surely, even if an additional promise of some "help" on the ten-year sentence had been considered by the jury, there is no reason whatever to assume that it might have reached a different conclusion. Cf. Giglio v. United States, supra at 154; United States v. Seijo, 514 F.2d 1357, 1364 (2 Cir. 1975; United States v. Kahn, 472 F.2d 272, 287 (2 Cir.), cert denied, 411 U.S. 982 (1973).

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Accordingly, the petitioner's motion pursuant to
28 U.S.C. § 2255 is denied.

Dated at New Haven, Connecticut, this 20th
day of September, 1977.

Robert C. Zamparo
United States District Judge

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THE WITNESS: Yes. It was like a couple of months after -- after I agreed with the government to testify.

THE COURT: Now, aside from that, are there any other promises or offers made to you in exchange for your testimony which the prosecutor has not covered?

THE WITNESS: The only other thing is the money I am given by the government for living expenses every day.

THE COURT: Tell us about that. You are receiving money from the government?

THE WITNESS: Yes. \$8. a day for living expenses.

THE COURT: And do I take it you are not serving a sentence now?

THE WITNESS: I am serving a sentence, your Honor, but I'm not in a regular federal -- I'm -- not in a federal jail, like, Atlanta or a place like that, and -- where I am at, we're required to, you know, buy our own food and any -- anything that we need, clothing or toilet articles, whatever we need, for ourselves.

THE COURT: And how did these arrangements come about? Did these arrangements come up: that is, the \$8. and your living -- special living quarters, after

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the agreements were reached that you would testify, or before?

THE WITNESS: No, that didn't come up till January.

THE COURT: And what were the circumstances that made that --

THE WITNESS: Well, that was -- after my wife was shot at and she was moved, and then after I -- two days after I testified in the case in Bridgeport, I was moved to this other location, and that's when I started to receive the --

THE COURT: So do I understand, and if I don't have it correctly, you straighten me out, because it's not only what the government says, but it's what your understanding of the agreements are -- is -- that matters. This \$8. a day and these special living quarters, that wasn't part of something that was put on the table in exchange for your testimony, but came about more for protective custody more than anything, is that your understanding?

THE WITNESS: Yes. That -- yes. When I first made, you know, these agreements with the government, none of that was mentioned at that time about the -- anything as far as my wife or, you know, anything for

myself.

THE COURT: All right. Now, up until the time that this ten-year agreement came about, were you paid any money in addition --

THE WITNESS: No.

THE COURT: -- to the promises?

THE WITNESS: Nothing.

THE COURT: Have we covered everything that's in the -- were part of the promises?

THE WITNESS: Yes, I believe so. Yes.

THE COURT: All right. Do you have anything in your file that would indicate Mr. McCarthy was offered leniency or benefits that have not been disclosed on the record?

MR. CLARK: No, your Honor, I believe, however, at the time an agreement was being reached with Mr. McCarthy, I believe the government agreed to protect his safety in such a fashion as to not put him into population in a state jail. Once he had testified openly.

THE COURT: I suppose not being there, I suppose that during the course of that discussion, somebody brought up the fact that if he was going to testify in several cases against individuals that his safety was

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2 A I'm not sure. I think it's three times the amount.
3 I think that's it, I'm not sure.

4 Q And the seven counts, you realize are punishable by
5 twenty years each, are you not?

6 A Yes.

7 Q So you were facing a sentence of 420 years, were you
8 not?

9 A Yes.

10 Q And for that, you are going to be sentenced to ten
11 years and do no additional time?

12 A Yes.

13 Q And I assume that you are also aware of the fact that if
14 you make parole first time, you can get out in approximately
15 three and a half years?

16 A Yes.

17 Q And have any promises been made to you about who will
18 come up and represent you at the parole hearing, tell them that you
19 cooperated?

20 A As far as somebody representing --

21 Q As far as somebody helping you make parole the first
22 time?

23 A Nobody promised me they'd help me make parole, the only
24 thing that's been told to me is that the parole board, they
25 would make the parole board aware of what testimony I gave.

Q. Leading you to believe that the parole board would probably act favorably upon your petition?

A. Well, they didn't lead me to believe anything, they never mentioned it.

Q. But you have a feeling that they're going to act favorably?

A. I hope they do.

Q. And you believe that will probably help, the fact that the government makes them aware of your testimony?

A. I imagine it would.

Q. Now, in regard to the attempt, or the alleged attempt on your wife, do you know whether or not there was any damage to her car?

A. Yes.

Q. You know for sure?

A. Well, I know from her telling me and the FBI telling me.

Q. What did she tell you?

A. That the windows were shot out of the car.

Q. The windows were shot out of the car?

A. Two windows, two windows.

Q. Does she still have that vehicle, do you know whether or not it was repaired?

A. Yes, it was repaired.

Q. Where was it repaired?

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2 if they attempted to bring it up, the reason for it
3 through Mr. McCarthy, I would object to him testifying
4 as to anything which he doesn't know of his own knowledge,
5 such as the fact that there was an actual attempt.
6 I would think that the government would have to show
7 protective custody issue through Mrs. McCarthy, I
8 only make that objection --

9 THE COURT: I'm not sure that's so. Because it is
10 not what, in fact, happened, but what Mr. McCarthy
11 thinks happened with respect to benefits he's getting
12 in exchange for his testimony. For example, let us
13 just assume Mr. McCarthy thought his wife was getting
14 \$750 a month. In my opinion, it is relevant that
15 he thinks she's getting \$750 as a benefit for his
16 testimony. So it's not only what the government actually
17 is giving as benefits, but what the witness thinks the
18 government is giving.

19 MR. MIRTO: I agree with you as far as him
20 saying she's in protective custody, but I don't agree
21 with you as far as the reason why she's in protective
22 custody, because I think that's -- that's hearsay as to
23 what he knows.

24 THE COURT: Well, I suppose so much of this is
25 hearsay because maybe Mr. Stalnaker said to Mr.

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2 McCarthy, "I have talked to Mr. Markel, the States
3 Attorney, and he's agreed to do A, B, and C," it is
4 what this witness has in his mind that he's getting in
5 exchange for his testimony that would affect his
6 credibility. What he doesn't know, of course, can't
7 influence him.

8 DEFENDANT McNELLIS: Bob.

9 THE COURT: Now, the point is the government is
10 saying if you bring out that his wife is getting
11 \$750 a month and just drop it at that point, the natural
12 inference is that she's getting paid off or that Mr.
13 McCarthy is getting paid off through his wife at a rate
14 of \$750 a month for his testimony. The government is
15 saying, but that's not so, that wasn't part of the
16 deal. The deal was with Mr. McCarthy that if his wife
17 got in some kind of difficulty with respect to her
18 safety, the government would move in and protect her,
19 and in Mr. McCarthy's mind his wife did get in some
20 kind of difficulty and the government fulfilled its
21 promise to protect her.

22 Now, I'm drawing a fine line, but I think it is
23 an important line. The important line is what's in
24 this man's mind. Is the government keeping its promises
25 in exchange for his testimony? And he's saying: Yes,

to \$8.00 a day?

A I guess you would call it that.

MR. CLARK: Objection, your Honor, I think that's argumentative.

MR. MIRTO: He's agreed with me, your Honor, that it is.

THE COURT: Overruled.

Q You know a fellow named Paul Marcella? Calls for a yes or no answer.

A I'm trying to think. I don't think I do know him.

Q Mr. McCarthy, for all these crimes, for all these -- all these crimes you are going to get, and you got, a ten-year sentence?

A That's correct.

Q And you are also aware that with the help of God, you will be on the street in three and a half years?

A Yes.

Q And is it your understanding that the government will help you before the parole board so that you can go on the street again in three and a half years?

A They didn't say they would help me.

Q Well, didn't they tell you that they would make the parole board aware of the fact that you had testified for the government?

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2 A Yes.
3 Q And you expect that's going to help you, do you not?
4 A I hope it does.
5 Q Now, in nine -- are you aware of the oath that you
6 took here in this court?
7 A Yes.
8 Q Do you believe in it?
9 A Do I believe what?
10 Q In the oath that you took here in this court?
11 A What do you mean, I believe in it?
12 Q Swear before God that you are going to tell the truth.
13 A Do I believe in it?
14 Q Yes.
15 A Yes, I believe in it.
16 Q In 1961, did you testify in a conspiracy to
17 commit B&E trial?
18 A Yes.
19 Q Did you tell the jury at that time under oath that you
20 didn't commit that crime?
21 A Yes.
22 Q And you did commit that crime, did you not?
23 A Yes.
24 Q So you perjured yourself in 1961 to keep yourself
25 from going to jail --

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A Yes.

Q -- did you not?

A Yes.

Q Mr. McCarthy, in relation to the Waterford bank robbery, isn't it true that you cased this Waterford bank with Richard Beedle?

A And John Summer.

Q When did that take place?

A Inthe early part of '72.

Q In the early part of '72?

A Yes.

Q Now, was it your intention at that time to rob the bank with Richard Beedle and John Summer?

A Yes.

Q This is the very same bank which is the subject of this trial?

A Yes.

Q Now, on September 4th of 1972, that was Labor Day, was it not?

A Yes.

Q What was the first time that you say you saw McNellis on that day?

A On Labor Day?

Q Yes.

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A We pointed the weapons at them, I don't remember anybody holding them at their head, they didn't give us any trouble.

Q Now, during the commission of all these crimes, you had weapons which you pointed at other people?

A Yes.

Q Did you not?

A Yes.

Q And those weapons were loaded?

A Yes.

Q And that took place during each and every one of these crimes?

A Yes.

Q So just to sum up, Mr. McCarthy, there's five bank robberies, four armed robberies, three murders, nine stolen cars, eighteen or somewhat less than eighteen violations of the National Gun Control Act, at least nine counts of carrying a weapon in a motor vehicle, seven counts of assault with intent to murder, four 25-year armed robbery counts and probably several other crimes, and for that, it is your understanding or your reasonable expectation that you will be on the street in three and a half years?

MR. CLARK: I object to that, your Honor, he never said that.

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MR. MIRTO: Yes, he did, your Honor.

THE COURT: I'm not sure he did, I'll leave it to the jury. But is it your reasonable expectation that you will be on the street in three and a half years?

THE WITNESS: No, I have never been promised that by anyone.

Q That isn't what I asked you. I think you said it was your reasonable expectation of the government letting the parole board know about your testimony would help you make parole?

A No, I didn't say that.

Q You didn't say that?

A No, I said I hoped, you saked me if they would -- if it would help me, and I told you I hoped it would.

Q Let me phrase the question this way. It is your hope that you will be on the street in three and a half years?

A Yes.

Q After having committed and admitted to all those crimes?

A Yes.

Q And this is in exchange for your testimony?

A Yes.

MR. MIRTO: That's all I have, your Honor.

THE COURT: Mr. Tiernan?

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criminal activity?

A Yes. Several.

Q Mr. McCarthy, in your mind, how do you think your agreement with the government regarding your sentence and lack of prosecution on other crimes would be affected by your lying in court?

A If I came in here and lied?

Q Yes.

A I imagine that that would break my deal with the government and the state or -- whatever cases they have.

Q You have also stated, Mr. McCarthy, that you hope to be out of jail in a three and a half year period, is that correct?

A Yes.

Q Do you hope to be out of jail tomorrow?

A No.

Q In your own mind, you wouldn't want to be out of jail tomorrow?

A Well, I would want to be out of jail tomorrow.

Q Has any member of the government, any government agent ever said anything to indicate to you that you would be out in three and a half years?

A No.

Q That's never been promised to you?

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A That I would be out in three, no.

Q You are currently serving a sentence of how many years?

A Ten-year sentence.

Q Are the people that you are confined with convicted people?

A Some are, some are waiting to be sentenced.

Q And they have entered pleas of guilty, to your knowledge?

A Some have pleaded guilty, some haven't pleaded to anything yet. They pleaded, but they haven't pleaded guilty to the crime yet.

Q Is this a penal institution?

A Yes, I would -- I guess you would call it that.

Q Bars on the windows?

A There are bars on windows, yes, and you are guarded by marshals.

Q Are you free to come and go as you please?

A No, no.

Q Did you go to this institution before you testified for the government?

A No. Not till after.

Q You have been in jail many years in your life, is that correct?

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Oct 3 8 36 AM '73

U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :
VS. : CRIMINAL NO. 13,202
AEDAN MC CARTHY :

MOTION FOR REDUCTION OF SENTENCE

Defendant moves for a reduction of the sentence imposed upon him on September 4, 1973 on the ground that his subsequent cooperation with the government as a witness in other pending criminal cases in this district and in other districts should entitle the defendant to additional consideration in view of the subsequent events so as to justify a reduction of the sentence imposed.

Francis J. Pavetti, Esq. of
Dupont, Pavetti & Dupont
Two Union Plaza
New London, Connecticut 06320
Attorneys for the Defendant

Dated: October 1, 1973

TO: Stewart H. Jones, Esquire
United States Attorney
Attorney for the Plaintiff
Federal Building
New Haven, Connecticut

NOTICE OF HEARING

Please take notice, that the undersigned will bring the above motion on for hearing before this Court in the

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United States District Court House at New Haven, Connecticut
on the 10th day of December, 1973, at 10:00 o'clock in the
forenoon of that day or as soon thereafter as counsel can be
heard.

Francis J. Pavetti, Esquire of
Dupont, Pavetti & Dupont
Two Union Plaza
New London, Connecticut 06320
Attorneys for the Defendant

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Motion
for Reduction of Sentence and Notice of Hearing has this
1st day of October, 1973, been mailed to Stewart H. Jones,
Esquire, United States Attorney, Federal Building, New
Haven, Connecticut.

Francis J. Pavetti, Esquire of
Dupont, Pavetti & Dupont
Two Union Plaza
New London, Connecticut 06320
Attorneys for the Defendant

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FILED

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U. S. DISTRICT COURT
NEW HAVEN, CONN.

October 23, 1973

Francis J. Pavetti, Esq.
2 Union Plaza
New London, Connecticut

Re: United States v. Aedan McCarthy
Criminal No. 13,202

Dear Mr. Pavetti:

Please be advised that I have no objection to your motion for reduction of sentence being heard at some point beyond the 120 day limit. You may argue it at a time convenient and satisfactory to you.

Very truly yours,

Stewart H. Jones
United States Attorney

By: Peter A. Clark
Assistant United States Attorney

PAC:pac

cc: Clerk
U.S. District Court
New Haven, Ct.

A-23

DUPONT, PAVETTI & DUPONT
ATTORNEYS AND COUNSELORS AT LAW
TWO UNION PLAZA
NEW LONDON, CONNECTICUT 06320

AREA CODE 203
447-0335

RALPH P. DUPONT
FRANCIS J. PAVETTI
ROBERT D. TOBIN

ANTOINETTE L. DUPONT
JAMES A. HARRIS
NEAL E. WILLIAMS

October 24, 1973

Honorable Jon O. Newman
Judge, United States District Court
Federal Building
New Haven, Connecticut 06508

Re: United States v. Aedan McCarthy
Criminal No. 13202

Dear Judge Newman:

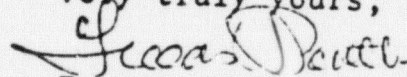
As you know, I am appointed counsel in the above-captioned case. Mr. McCarthy has requested me to file a Motion for Reduction of Sentence, which I have filed with the court. I purposely noticed the motion for December 10, 1973 so as to permit consideration of Mr. McCarthy's on-going cooperation with the Government and to bring the matter within the 120 day provisions of Rule 35. However, it may well be that it would not be timely from Mr. McCarthy's standpoint to have this motion heard within the 120 period.

Assistant United States Attorney Clark has indicated that he has no objection to having the motion heard at some point beyond the 120 day limit. A copy of his letter is enclosed for your information.

I would like to confirm with you that the motion may be heard and acted upon beyond the 120 day limit if that course of procedure becomes necessary in order to permit a full consideration of all factors bearing on the issue.

Thank you for your cooperation in this matter.

Very truly yours,


Francis J. Pavetti

FJP:MV
Enclosure

cc Assistant United States Attorney Clark
Aedan McCarthy

A-24

October 30, 1973

Francis J. Pavetti, Esq.
Dupont, Pavetti & Dupont
Two Union Plaza
New London, Connecticut 06520

Re: United States v. Aedan McCarthy - Cr. No. 13,202

Dear Mr. Pavetti:

In response to your letter of October 24, I have no objection to hearing your motion for reduction of sentence after the 120-day period. However, you should be advised that there is some case law for the proposition that the 120-day period is jurisdictional.

Sincerely,

Jon O. Newman
United States District Judge

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United States Department of Justice

UNITED STATES ATTORNEY
DISTRICT OF CONNECTICUT

141 CHURCH STREET

P. O. Box 1824

NEW HAVEN, CONNECTICUT 06508

November 14, 1975

Mr. Lawrence A. Carpenter
Regional Director
U.S. Board of Parole
U.S. Department of Justice
Bureau of Prisons
Kansas City Regional Office
K.C.I. Bank Building
8800 N.W. 112th Street
Kansas City, Missouri 64153

Re: Aedan McCarthy

Dear Mr. Carpenter:

I am writing on behalf of the above inmate, who is presently incarcerated at Mr. McCarthy was arrested in November of 1972 after a bank robbery in the city of New Haven, Connecticut. Shortly after his arrest he agreed to cooperate with federal and local authorities in connection with the instant bank robbery offense, as well as all other matters that he had knowledge of. In return for this cooperation Mr. McCarthy was allowed to plead to one count of the bank robbery statute, i.e., 18 U.S.C. §2113(b), which is the non-firearms section of the statute.

From the very beginning Mr. McCarthy's cooperation with us and with local authorities was extensive, to the best of my knowledge 100% truthful, and of great assistance to all law enforcement authorities concerned. He has testified in four federal trials involving bank robberies, and his testimony has resulted in the conviction of several extremely dangerous felons in Connecticut. In addition to his testimony at these trials and the vast wealth of information that he provided federal authorities regarding other offenses, he has also provided statements and information to local law enforcement authorities that have allowed them to clear up a great number of State crimes, including three murders. Mr. McCarthy has at all times expressed a willingness to testify in any of these matters for the local authorities as well as us.

Exh. "A"

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Mr. Lawrence A. Carpenter
Page Two
November 14, 1975

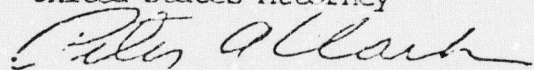
It should also be noted that as a result of Mr. McCarthy's cooperation with the Government his family was exposed to substantial risk. Approximately two weeks after his first grand jury appearance in late November of 1972 unknown assailants fired some shots into his wife's car, narrowly missing her. Thereafter she was on the Witness Protection Program for a fairly lengthy period and was moved around the country to several locations before her protection was finally terminated.

I feel that these factors should be given substantial consideration when Mr. McCarthy appears before the Parole Board. He has cooperated with us to the fullest extent possible and has testified effectively whenever called upon to do so. I realize that his previous record is quite serious; however, in order to encourage cooperation with the Government in cases of this nature, I do feel that what he has done should be considered to his benefit. It should be noted that one of the individuals against whom he testified and who was convicted as a result thereof was sentenced to a 15 year term for bank robbery. Under the present guidelines that prisoner would serve approximately 65 months. It would be somewhat anomalous if Mr. McCarthy were required to serve a longer period of time than someone against whom he testified. In view of all these factors, including Mr. McCarthy's total cooperation with us, danger and disruption to his family, and the policy considerations of showing that cooperation with the Government does in fact benefit one in his position, I would urge that every possible consideration be given to Mr. McCarthy at such time as he appears before the Parole Board. I would also point out that with respect to the guidelines for these offenses, the violation that Mr. McCarthy has been convicted of does not fall within the maximum range of the bank robbery guidelines inasmuch as it is the count of the statute not dealing with use of a weapon.

Thank you for your anticipated cooperation.

Very truly yours,

Peter C. Dorsey
United States Attorney



By: Peter A. Clark
Assistant United States Attorney

PAC:pac

Exh. "A"

A-27

Post Office Box #152L
Providence,
Rhode Island, 02901

January 20, 1974

FILED

8 29 AM '74

U.S. DISTRICT COURT
NEW HAVEN, CONN.

Honorable Jon O. Newman
United States District Judge
District of Connecticut
New Haven,
Connecticut

Your Honor:

My name is Aedan McCarthy and I was sentenced to a ten year Federal prison sentence by your honor about four months ago.

I have received your ruling on my motion for a reduction of sentence this week. I was very surprised by your ruling denying my motion to reduce sentence, because both myself and my wife had been assured repeatedly by Special Agent Stallnacker of the F.B.I. that my sentence would be reduced by your Honor.

I and my wife really should not have been surprised by this action, because in the last fourteen months, both myself and my wife had many promises made to us, which were then broken; and we have also been lied to repeatedly by the following persons: Peter Clark, Assistant United States Attorney in New Haven, Connecticut; Special Agent Stallnacker of the Federal Bureau of Investigation; Inspector John Partington, who is a Security Specialist of the United States Marshals Service and is directly connected with the Federal Witness Security Program which is run by the United States Department of Justice in Washington, D.C. Also included in this list is Detective Vincent De Rosa of the New Haven, Connecticut Police Department.

I would like to bring Your Honor's attention to the fact that I myself, did not seek to make "a deal" for my cooperation neither with the Federal government nor with the State of Connecticut.

I will now try to list these lies, and broken promises for Your Honor in the chronological order in which they occurred.

The first lie was, on the day I was arrested which was November 16, 1972, I was promised complete and total immunity from all charges if I would cooperate fully with the F.B.I., represented by Special Agent Stallnacker, and Detective Vincent De Rosa of the New Haven, Connecticut Police Department.

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I then spoke to these two men and also Assistant United States Attorney Peter Clark about all crimes which they asked me for information on, and other crimes which I could supply them with information on. I spoke to these people one hundred per cent truthfully, openly, completely, and without holding anything back.

After these men had gotten all the information about all the crimes that they wanted from me, and had completely exposed me as a Government informer and witness in all of the New England states and also New York State, then Agent Stallnacker came back to me and told me that the State of Connecticut would not go along with the grant of immunity that they had previously promised me.

Agent Stallnacker then told me that the "best deal" he could get for me was that I should plead guilty in Federal Court to a charge that had a ten year maximum sentence, and that I would receive a concurrent sentence in the State of Connecticut court which would be the same as the sentence which I received in Federal Court, from Your Honor.

During this period, Agent Stallnacker was constantly in touch with my wife and promised her that I would do no prison time, or very little prison time, or two years at the very most.

Agent Stallnacker also told me in the presence of another F.B.I. Agent, Herbert Northcutt, that I would not receive "anywhere near" the ten year maximum prison term which the Federal charge carried, which I was going to plead guilty to in front of Your Honor.

Agent Stallnacker also told me that if I got a ten year prison sentence from Your Honor, that, "He would eat his hat on the New Haven Green!"

I knew, Your Honor, that when I came before you for sentencing, you asked me whether or not any promises had been made to me, I had to tell Your Honor that no promises had been made to me because if I had said that promises had been made to me, you wouldn't have accepted my plea of guilty to the charge. At that moment in time, after I had been completely and fully exposed as a government informer and witness, I knew that I could no longer afford to take the chance of pleading not guilty and of probably getting convicted after trial, and having to go to prison, where I most assuredly would be murdered.

The reason that I haven't brought this information to Your Honor's attention before this time, is that Agent Stallnacker told my wife that my ten year sentence would definitely be reduced, and that the only reason that I did receive a ten year sentence was to make it look better for the Government's side when I testified in these various cases.

After I began cooperating with the Government, and an attempt was made on my wife's life, my wife and I were

promised by Agent Stallnacker that my family would be funded by the United States Marshals Service under the Federal Witness Security Program and that they would receive new identification and would be relocated in another part of the country.

My wife and I then had a meeting with Agent Stallnacker, and this man John Partington who promised us that the Federal Government would pay all the costs of my family being moved to Florida. After my family reached Florida they were left stranded for two or three weeks without subsistence funds until the beginning of the following month.

After being in Florida for some time, my family moved to Rhode Island so that they could be near where I am located in this Government safehouse.

Coinciding with this my wife and I were promised by Agent Stallnacker that she would be funded by the Federal Witness Security Program until I was released from all custody.

Also I was promised by Agent Stallnacker and Assistant United States Attorney Clark that I would remain living in this safehouse until such a time that I was completely finished testifying in all Federal trials, and also all Connecticut State trials.

Now, Your Honor, I have been informed by United States Marshal Donald W. Wyatt, who runs the Federal Witness Security Program in Rhode Island and also is the supervisor of this safehouse, on January 19, 1974, that the United States Department of Justice and the Federal Government have absolutely no intention of living up to the promises and agreements which were made to us by representatives of the United States Government who are Agent Stallnacker and Assistant United States Attorney Clark. Also United States Marshal Wyatt told me yesterday that upon the completion of my testimony in my last Federal trial, which is approaching shortly, that all funding for my wife and son will be terminated at once and that I will be transported to a Federal Penitentiary where my life will be grave danger and where there is a good chance I will be murdered.

Also, when I go to this Federal Penitentiary, I must continue to testify in five Connecticut State cases, or face the breaking of my deal with the State of Connecticut. When my wife gets cut off from Federal Witness Security Program funding, she will be forced to move back to her family's home in Connecticut, where she was living at the time that she was shot at while driving in her car, as you know.

The reason that my wife will have to move back to her family's home in Connecticut is because she cannot earn enough money to support her and my son if she lives anywhere else. This will place my wife and son in grave danger of being killed because someone may seek revenge upon me, by trying to harm them.

It seems now, that the F.B.I. and the United States Attorneys Office are finished "using me" to testify in their cases, and that they are going to "throw me and my wife and my six year old son to the dogs!"

I would like to ask you at this point Your Honor, if you think that the United States Department of Justice should be allowed to handle Federal witnesses and their families in the way that I have described to you in this letter?

One of the purposes of this letter Your Honor, is that you reconsider my motion for reduction of sentence on the grounds of the many broken promises and many outright lies which I and my wife have received from many various agencies of the United States Department of Justice.

If Your Honor feels that you cannot reduce my ten year sentence, I would like to ask you to consider the possibility of amending my sentence to become a 4208 (A)-2 type sentence.

If granted parole on the 4208 (A)-2 sentence, it would allow me to move to another part of the country with my family, and this would greatly reduce the chance of myself or my wife or my son being killed, of which there is a definite danger because several of the persons whom I am testifying against are known killers by the F.B.I. and the police.

I would appreciate any consideration Your Honor can show me in this matter, and my wife and I are both ready and willing to swear under oath to the truthfulness of any and all statements and accusations that I have made in this letter.

I realize that because of the accusations and charges which I have made here in this letter, that I may have hurt my chances of ever receiving a parole, but I feel that my life, and the lives of my wife and my child are more important than that.

In closing this letter Your Honor, it is requested that you issue a Court Order prohibiting the Government from removing me from my present location until the allegations and accusations contained herein have been resolved.

Respectfully submitted,

Aedan M. McCarthy
Aedan McCarthy

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1 MR. CLIFFORD: Federal and state, both ways.

2 One of the complications, your Honor, is that the
3 State of Massachusetts, contrary to the agreement, has issued
4 a probation violation against Mr. McCarthy, which is presently
5 lodged in the appropriate United States Marshal's office, and
6 as far as I know, that has not been withdrawn.

7 MR. CLARK: It's been withdrawn.

8 MR. CLIFFORD: I will rely upon Mr. Clark's indication
9 that that warrant was withdrawn.

10 The issuance and the lodging of that warrant clearly
11 was outside the terms of any agreement. In other words,
12 leaving aside whether or not there was an agreement of immunity
13 or not, the agreement that came before your Honor under Rule 11
14 here, that issuance of the probation violation warrant out of the
15 State of Mass. and the lodging of it against Mr. McCarthy was
16 a breach of the agreement.

17 If that has been withdrawn, then, I take it, we, again,
18 havenot been harmed, and I don't press that matter.

19 So that, your Honor, for the purpose of the hearing
20 this afternoon, I think I would like to focus simply on the
21 issue of whether or not the original agreement for the testimony
22 and the cooperation of Mr. McCarthy was that of immunity both
23 on the federal and state level, and that agreement was subsequently
24 broken by the law enforcement authorities, so that, in effect,
25 when he came before your Honor on his plea and to the charges in

Pavetti - direct

of Mr. McCarthy when you saw him?

A I don't believe they do.

Q Mr. Pavetti, if I suggest November 16 or November 17 of 1972, would that accord generally with your recollection?

A Yes, it would.

Q Assuming that to be true, you were appointed and saw him two months after his arrest, is that correct?

A That's right.

Q Mr. Pavetti, when you first saw Mr. McCarthy, were you aware that he had been talking to law enforcement agents?

A Yes, I was.

Q That was with an eye towards cooperation, is that correct?

A That's correct.

Q And when you saw Mr. McCarthy, did he indicate anywhere in his conversation with you that he wanted, or that the arrangement was for him to get immunity; do you recall that?

A Yes. He said that he had been having discussions with Mr. Stalnaker of the FBI and Assistant U. S. Attorney Clark, and he indicated to me it was his feeling that he would not have to serve any time at all, or that he would get a so-called
A sentence which would permit him to merely go to a parole board upon being sentenced and not serve any time. The statement that he made was in terms of serving time. By immunity, I construed

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Pavetti - redirect

THE COURT: He said they had led him to believe that he would not serve any federal time?

THE WITNESS: Yes. He said it was his understanding that he would not be required to serve any time under state or federal, and I recall going into it, and he indicated this would be serving no time, or that there would be a so-called A sentence, and they would see to it that the parole apparatus would be available to him if a sentence were imposed, so he wouldn't have to serve any time.

THE COURT: He indicated there were two alternatives?

THE WITNESS: Yes, as I recall, yes.

THE COURT: In other words, that apparently it wasn't even, as he conveyed it to you, an assurance that there would be no time, if he at the same time contemplated an A sentence where the parole board would be making a decision, obviously, the parole board wouldn't make any decision if he wasn't in jail?

THE WITNESS: That is correct. I think about what was meant a bare minimum of time that would provide him with the opportunity of immediate parole consideration and that the government would support those efforts, is the way he understood it, so that almost immediately

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205 CHURCH STREET
NEW HAVEN, CONNECTICUT

McCarthy - cross

Q Was your primary motivation doing that to avoid incarceration in a state jail; is that why you were pleading in federal court?

A I was pleading guilty in the federal court; I agreed that I would plead guilty in the federal court, because, I believe, number one, that the government would grant -- would protect me. Also, that I would only receive 4- from talking with Mr. Stalnaker, I was under the impression that even though I was pleading guilty to a ten-year count, I would only get a couple of years in the federal court. You did not make me this promise. Mr. Stalnaker did.

Q Do you recall the day that you came to court here to enter your plea to that charge?

A Yes.

Q Do you recall at the time Judge Newman advising you that in view of the circumstances of the crime and so forth, that it was, in fact, quite likely that you would be sentenced at least to the full ten years?

A Yes, I do.

Q So that at the time you actually entered the plea, you were aware that the ten-year sentence was a distinct possibility, regardless of what anyone else may have previously told you?

A I believe at the time through conversations which were

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McCarthy - cross

made between Thurl Stalnaker and my wife that I was going to
get -- no matter what my sentence was, if I got the maximum
sentence, if Judge Newman gave me the maximum sentence, I was
going to get a reduction at a later date.

Q Did you, in fact, apply for reduction of sentence?

A Yes, I did.

Q That was not granted?

A That was not granted.

Q Do you recall when that was?

A I received the notice shortly after I finished
testifying in my last federal trial. I think it was only a
matter of a few days after I finished testifying in Maine.

Q Do you recall specifically Judge Newman advising you
at the time of plea that a ten-year sentence was a distinct
possibility, and that was, in fact, what he would likely
award you, is that correct?

A Yes.

MR. CLARK: No further questions.

MR. CLIFFORD: No further questions.

THE COURT: Prior to your arrest in December, had
you ever been arrested before?

THE WITNESS: Yes, I had.

THE COURT: Had those arrests ever resulted in your
entry of a plea in a criminal case?

1 MR. CLIFFORD: That's right.

2 THE COURT: Is there anything more to be said about
3 that issue?

4 MR. CLIFFORD: No, except that the only thing I would
5 want to put on the record, we have not called Mrs. McCarthy
6 in view of the fact that she's no longer within the Safe Witness
7 Program, and we have made a decision not to jeopardize her and
8 I guess we will have to run whatever inferences your Honor draws
9 from our failure to call Mrs. McCarthy, but in balancing out
10 the situation, it was our decision not to call her.

11 MR. CLARK: There is one thing I would like to clarify
12 for whatever significance it may have, and that is in speaking
13 about the terms of the agreement, I think the terms of immunity
14 and no time were used interchangeably, and it's my understanding,
15 subject to correction, that does not necessarily mean that
16 there would be no prosecution, but the thrust of it was that
17 there would be no effective jail sentence, that's the understand-
18 ing of --Mr. McCarthy has indicated. I'm not saying that the
19 government agreed to that, but that's his claim. There would be
20 no effective jail sentence as opposed to no prosecution.

21 MR. CLIFFORD: I have no problem with that.

22 THE COURT: All right. I will deal with the matter
23 now. The petition for habeas corpus, as I now understand, raises
24 the sole issue of whether or not in the course of the investiga-
25 tion and prosecution of the federal charges in connection with

Exhibit 3

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1 Criminal No. 13202 in this court, Mr. McCarthy was given a
2 commitment by federal authorities to the effect that he would
3 either not be prosecuted for the charges arising out of the
4 incident for which he was arrested, namely: a robbery, in
5 which there was a shooting, and I believe the police officer
6 wounded, is that correct?

7 MR. CLARK: There were no injuries to police officers.

8 MR. CLIFFORD: Defendants were injured.

9 THE COURT: Defendants were shot. There were shots
10 exchanged, in any event.

11 MR. CLARK: The defendants were shot.

12 THE COURT: His claim that there was either a commit-
13 ment or no prosecution for that episode, or that he would be
14 assured that he would not be sentenced to any time in custody
15 as a result of that episode, that's the claim that is before
16 me and which was the subject of a hearing today.

17 Obviously, there is a sharp factual dispute between
18 Mr. McCarthy and all the other witnesses. Mr. McCarthy's
19 testimony is that within two days of his arrest, he was told by
20 an FBI agent and a state official that such a commitment had been
21 made and that it was again stated to him within two days of his
22 arrest in the presence of an Assistant United States Attorney.

23 The FBI agent has denied it, the state police
24 officer -- the state in the sense of state or local -- a New
25 Haven police officer has denied it, and the Assistant U. S.

A-38

1 just seems totally implausible that a person who allegedly is
2 bargaining for something so important as his freedom and for
3 the first time meets the prosecutor in the case, isn't going
4 to want to have some brief discussion with him to be sure that
5 the understanding is clear, and that seems all the more necessary
6 here in view of the fact that the claim as to Mr. Stalnaker
7 is not terribly precise claim. When Mr. McCarthy testified, he
8 said Mr. Stalnaker said there would be no problem with the
9 federal authorities, Mr. McCarthy says he understood that to mean
10 no prosecution or no time to be served. It's totally
11 implausible that a person negotiating on something as vital as
12 this would let it go at a statement as generalized as there will
13 be no problem.

14 When Mr. McCarthy appeared before me, there was
15 extreme precision in what it was -- what the terms of his
16 arrangements were, and it is totally implausible, first, that
17 such an offer of plea immunity would be made; secondly, that
18 he would think it was made and not be precise with the agent
19 and with the Assistant U. S. Attorney the first time he met
20 him or thereafter to pin it down in great detail; and having
21 heard the witnesses, I see absolutely no basis to doubt the
22 credibility of those who deny the agreement and, frankly, I see
23 no basis to credit Mr. McCarthy's account of it.

24 It's unfortunate that his wife is not a witness,
25 although, obviously, her testimony would be suspect as being